IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 57181-M of 2006

DATE OF DECISION : 03.11.2006

Sanjeev Kumar and another

.... PETITIONERS

Versus

State of Haryana and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. V.S. Rathore, Advocate,
for the petitioners.

Mr. M.S. Sindhu, D.A.G., Haryana.

Mr. Mohnish Sharma, Advocate,
for respondent No.2.

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Petitioners Sanjeev Kumar and Anil Kumar, both brothers, have filed this petition under Section 439 of the Code of Criminal Procedure for the grant of regular bail, as they have been arrested in a complaint/protest petition filed by respondent No.2.

2. I have heard counsel for the parties.

3. Counsel for the petitioners contends that for the alleged incident, which took place on the intervening night of 11/12.2.2005, FIR No. 10 dated 12.2.2005 was got registered by the complainant alleging therein that his daughter Sonia, who was a student of 10th class in Shivalik Public School, Village Sabhapur, Tehsil Jagadhri, District Yamuna Nagar, was raped by the petitioners, when she was coming out of her house in the mid night to answer the call of nature. She was taken to the room on the first floor where the petitioners committed rape after threatening her. A thorough investigation was conducted in the said FIR by the Deputy Superintendent of Police, Jagadhri and thereafter, the cancellation report was submitted to the court. Before the court, the complainant filed protest petition which was

treated as a complaint, in which both the petitioners have been summoned for the offences under Sections 363, 366, 376, 506 read with Section 34 IPC. After summoning, the petitioners filed anticipatory bail, which was dismissed by the Sessions Court on 19.4.2006 and thereafter by this Court on 2.5.2006. However, the petitioners were granted liberty to move application for regular bail before the Sessions Court. Thereafter, the petitioners surrendered on 5.9.2006 and moved application for regular bail, which has been dismissed by Addl. Sessions Judge, Jagadhri on 11.9.2006. Hence, this petition.

4. Counsel for the petitioners contends that the petitioners have been falsely implicated in this case due to the old enmity between the parties. They are neighbourers in the village. While referring to the MLR, counsel contends that no injury was found on the person of the prosecutrix and as per the FSL report, no semen could be detected on any of the exhibits i.e. Pyjama, pubic hair, vaginal swabs and slides. Counsel for the petitioners refers to the cancellation report submitted by the police, in which it has been found that on the day of occurrence, prosecutrix was found standing alone on the gate of Ply Factory in the area of Mali Majra and the Chowkidar gave a telephone call to the police. Thereupon, the police came and took the girl to Police Station, from where the complainant, who is her father, took her. As per the aforesaid complaint, the prosecutrix went 160 yards away from the house to answer the call of nature. It has not been explained why she went outside her house. During the police investigation, it was found that the allegation of forcibly abducting the prosecutrix by the accused in the mid night from her house which is situated in the middle of the village was found to be false. Statements of various persons were recorded during the investigation and none of them supported version of the complainant. Counsel for the petitioners further contends that there is an old rivalry between the complainant and family of the petitioners. He contends that the complainant's real brother, namely Rajender Kumar, had contested the election for the post of Sarpanch against Krishan Lal, real uncle of the petitioners, and lost the same. Counsel further contends that as a matter of

fact, marriage of petitioner No.1 was to be solemnized on 6.3.2005 with the real cousin of the prosecutrix and with a view to obstruct the said marriage, a false complaint was filed by the complainant.

5. On the other hand, counsel for the complainant opposed the prayer of the petitioners for the grant of bail on the ground that the alleged offence is serious. However, he could not explain the report of the Chowkidar made to the police and the fact as to why the prosecutrix went 160 yards away from her house to answer the call of nature.

6. In view of the above, without expressing any opinion on the merits of the case, I deem it appropriate to grant regular bail to the petitioners and they are, accordingly, ordered to be released on bail subject to their furnishing bail bonds to the satisfaction of the trial court.

November 03, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**